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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 44

LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, ET AL.,

Petitioners,

vs.

HAYES FREIGHT LINES, INC.,

Respondent

BRIEF OF AMERICAN TRUCKING ASSOCIATIONS, INC., AMICUS CURIAE

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OPINION BELOW

The opinion on reargument of the Supreme Court of Illinois (R. 50-62) is reported at 2 Ill. 2d 58 and 117 N.E. 2nd 106.

JURISDICTION

Judgment of the Supreme Court of Illinois (R. 62) was entered on January 20, 1954. Thereafter, on April 19, 1954, the petition for writ of certiorari was filed, and was granted on June 7, 1954 (R. 64). Jurisdiction of this Court to review the judgment rests upon 28 U.S.C. §§1257(3) and 2101(f).

STATUTES INVOLVED

Involved are the federal Motor Carrier Act, 1935, as amended, also known as Part II of the Interstate Commerce Act (49 Stat. 543 *et seq.*, as amended, 49 U.S.C. § 301 *et seq.*), and Section 132.02 of the Illinois Uniform Act Regulating

Traffic on the Highways (Ill. Rev. Stats. 1953, Ch. 95½, par. 229b, Vol. 2, p. 257), printed in part as Appendix A and Appendix B, respectively, to the brief for the petitioners (Pet. Br. 19-27).

QUESTION PRESENTED

The sole question presented for review by this Court is whether, as a sanction for the violation of the State's statute establishing weight limits for motor vehicles traveling upon its highways, the State of Illinois may bar from the use of its highways for a period of time all the vehicles of an interstate motor carrier authorized to engage in interstate commerce in the State of Illinois pursuant to a certificate of public convenience and necessity under the federal Motor Carrier Act, 1935.

STATEMENT

1. *The operations of respondent*

The respondent, Hayes Freight Lines, Inc., is a common carrier of property, transporting general commodities by motor vehicle in interstate commerce. It conducts its operations pursuant to a certificate of public convenience and necessity issued to it by the Interstate Commerce Commission under Docket No. MC-42329, authorizing operations between points in the States of Illinois, Indiana, Iowa, Missouri, Kentucky, Tennessee, Ohio, Michigan, Pennsylvania and West Virginia. Respondent also is authorized to and does transport property by motor vehicle in intrastate commerce within the State of Illinois as a line-haul carrier pursuant to a certificate of public convenience and necessity issued by the State.

In the conduct of its business as a common carrier of property by motor vehicle, in both interstate and intrastate commerce, respondent serves approximately 1,035 cities,

villages and communities in the State of Illinois and 2,500 more in the other states in which it operates. Among the things that its transports in interstate commerce over the highways of Illinois, respondent carries military munitions and supplies for the United States Government in its furtherance of the national defense effort. Respondent also operates over the highways of Illinois in the transportation of mail, under contract with the United States Post Office Department, over various routes between, among other places, Sparta, Illinois, and St. Louis, Missouri.

The respondent operates 1,929 motor vehicles and maintains 34 terminals representing a total investment of $5,613,570.91. Employing 2,059 persons, 736 in interstate and intrastate operations within Illinois, respondent has an annual payroll of $8,834,667.00. Other recuring obligations of the respondent include annual payments due on mortgages in the amount of $185,517.56, rentals for terminals of $233,799.67, payments for motor vehicle equipment of $1,088,722.10 and expenditures for tires and gasoline of $831,966.96.

2. *The provisions of the statute*

In Case No. 52-13, pending in the Circuit Court of Marion County, Illinois, the respondent is charged with 157 violations of the statute prescribing weight limits for motor vehicles traveling upon Illinois highways—Section 131 of the Uniform Act Regulating Traffic on the Highways (Ill. Rev. Stats. 1953, Ch. 95½, par. 228, Vol. 2, p. 256). For these violations the drivers of the vehicles presumably were arrested pursuant to Section 132 and appropriate fines imposed against the owner and/or driver in accordance with Section 132.01. (Ill. Rev. Stats. 1953, Ch. 95½, pars. 229 and 229a, Vol. 2, pp. 256-257, quoted in Appendix A.) As an additional penalty it is sought to deny the respondent use of the Illinois highways for a period of 90 days pursuant

to Section 132.02 of the Uniform Act challenged herein. Section 132.02 provides, in part:

> (b) The commercial vehicle operator's privilege of any commercial vehicle operator shall be suspended as hereinafter provided, when such commercial vehicle operator shall habitually operate one or more commercial vehicles in violation of Section 131 of this Act.
>
> * * * * *
>
> (g) . . . Proof that a total of ten or more convictions for violation of Section 131 of this Act have been entered during any twelve months period with respect to the operation of one or more commercial vehicles by any one commercial vehicle operator, whether operated individually or through agents, servants or employees of such commercial vehicle operator, shall constitute prima facie evidence that such commercial vehicle operator has habitually operated a commercial vehicle or more than one commercial vehicle in violation of Section 131 of this Act . . .
>
> * * * * *
>
> (i) Whenever the court shall find from the evidence that a commercial vehicle operator has habitually operated a commercial vehicle or more than one commercial vehicle in violation of Section 131 of this Act, it shall enter an order suspending the commercial vehicle operator's privilege of such commercial vehicle operator for a period of 90 days. If at any time thereafter in another proceeding brought under this section, the court shall find from the evidence that a commercial vehicle operator has again habitually operated in violation in Section 131 of this Act, it shall enter a similar order of suspension except that the court shall suspend the commercial vehicle operator's privilege of such commercial vehicle operator for a period of one year.

During the period of time within which the respondent committed the 157 violations for which its right to traverse the highways of Illinois is sought to be suspended, respondent operated approximately 60,000 vehicle-trips over the

highways of Illinois, traveling approximately 90,000,000 miles, and transporting approximately 7,500,000 pounds of property daily. The offenses themselves resulted from "axle" overloads, due to the shift of cargo during the course of operation of the vehicles; only two violations involved "gross" overloads, in which the weight of the vehicle and load exceeded the maximum allowance of 59,000 pounds gross established by statute for the type of vehicle operated.

In this connection, it is noted that petitioners suggest (Pet. Br. 17) that this Court "take judicial notice that overloaded trucks will destroy the highways of Illinois." Certainly, it is conceded that all motor carriers must make every effort to conform with the size and weight limits prescribed by the various states, regardless of their reasonableness in any given instance. However, to suggest, as do petitioners, that the slightest overload, gross or axle, "destroys the highways" begs the question by assuming that state load limits are invariably set at the maximum weight possible without danger of damage to the states' highway system. The history of Illinois load limits refutes this assumption. Prior to July 17, 1945, the Illinois gross load limit for tractor semi-trailer combinations, irrespective of the number of axles, was 40,000 pounds, and the axle load limit was 16,000 pounds. Effective July 17, 1945, the law was amended to authorize gross loads of 45,000 pounds for three-axle tractor semi-trailer combinations and 59,000 pounds for such combinations having four or more axles, and increase the axle load limit to 18,000 pounds. As a matter of fact, Illinois today allows gross load limits as high as 72,000 pounds on certain vehicle combinations. Thus, it will be seen that on July 16, 1945, any tractor semi-trailer with a gross weight in excess of 40,000 pounds or axle load exceeding 16,000 pounds was in violation of the law in Illinois, whereas on the succeeding day four-axle tractor semi-trailers could be legally loaded to gross weights of

59,000 pounds, and axle loads of 18,000 pounds also were legal. Do petitioners contend that in the period between the lower and higher limits, Illinois so modified its entire highway system as to enable it to carry the greater loads without the destruction which their argument assumes would otherwise have occured? If further refutation of the argument were needed, it could be pointed out that all states allow the movement, under special permits, of motor vehicles loaded greatly in excess of applicable weight limits. It is respectfully suggested that there is absolutely no basis for this Court to assume that trucks loaded in excess of the presently-applicable load limits of Illinois *ipso facto* destroy the highways of that State.

3. *The decision of the Illinois Supreme Court*

Charged with the habitual violation of the size and weight laws and threatened by the suspension of its operating rights, respondent brought an action against petitioners in the Circuit Court of Marion County, Illinois, seeking declaratory judgment that Section 132.02 of the Uniform Act was unconstitutional and an injunction restraining petitioners from proceeding with the suspension action. The Circuit Court dismissed the complaint (R. 13), and respondent appealed to the Supreme Court of Illinois. The Supreme Court sustained the respondent's contention that the challenged suspension section when applied to carriers operating pursuant to certificates of convenience and necessity issued by the Interstate Commerce Commission was in conflict with the federal Motor Carrier Act and to that extent invalid (R. 58-62). Accordingly, the Supreme Court of Illinois reversed the decree of the Circuit Court with instructions to enter a decree in accordance with the views expressed in the opinion of the Court (R. 63). Petitioners sought certiorari for a review of the decision of the Supreme Court of Illinois.

4. *The interest of American Trucking Associations*

The issue before this Court is of great interest to American Trucking Associations, Inc. A.T.A. is the national organization of the trucking industry, representing all types of motor carriers of property. Organized and existing as a non-profit corporation under the laws of the District of Columbia, A.T.A. maintains offices at 1424 Sixteenth Street, Northwest, Washington, D. C. Its brief, *amicus curiae*, is submitted with the consent of both parties, pursuant to the provisions of Rule 42(2).

The ability of the trucking industry effectively and efficiently to serve the commerce of America is dependent upon the continued untrammeled movement of motor vehicles through the various states. To be sure a state may properly detain a particular truck that exceeds the prescribed weight limits. However, to the extent that each of the states may bar all operations of motor carriers because of a small number of violations of local laws and ordinances the free movement of trucks across the length and breadth of this nation will have been impeded. Fettered in this fashion, the trucking industry will be unable to fulfill its intended function of providing speedy, economical and flexible transportation to government, industry and agriculture, and not only the trucking industry but the economy of the country in general will suffer irreparable injury.

5. *The consequences of an adverse decision*

A decision that a state may bar a certificated interstate motor carrier from the use of its highways for the violation of its size and weight laws would have far-reaching and devastating consequences. In the instant situation, of course, the petitioners could be expected to proceed with their action seeking a 90-day suspension of the respondent's use of the Illinois highways. If imposed, the suspension

could very well result in the financial ruin and bankruptcy of the respondent as approximately 62½ percent of its operations in interstate commerce originate or terminate in, or require the crossing of, the State of Illinois. The fate of the respondent, however, would be relatively insignificant in the totality of the effects of an adverse determination of the issue herein.

If the State of Illinois succeeds in denying the use of its highways to all vehicles operated by interstate motor carriers, a small number of whose vehicles have violated the state's weight laws, it can be anticipated that other states as well will seek to avail themselves of this easy substitute for more painstaking law enforcement. Undoubtedly these states, as Illinois, will rely on the spurious argument that the suspension of carriers' operating rights is necessary for the enforcement of these laws, that fines are no deterrent to overloading of motor vehicles as they are merely one more cost of doing business passed on to the shipper (Pet. Br. 15). The argument disregards completely the intense competition encountered in the trucking industry, not only from other motor carriers but also from the railroads and water carriers, that serves to prevent the adjusting of a carrier's rates to accommodate overload fines. The argument furthermore ignores the availability of other remedies effectively used, such as the banning of the vehicles actually overloaded, the impounding of overloaded vehicles or even the arrest of the operators. (See Appendix A.)

If the remedy of the suspension of interstate operating rights may be invoked in the enforcement of a state's law prescribing weight limits for vehicles traveling upon its highways, the sanction may be imposed for the violation of nearly all motor vehicle laws. Conceivably, a suspension of operating rights could be imposed for the violation of a traffic ordinance as well; an interstate motor vehicle operator instead of receiving a fine for overtime parking could

be given a suspension. And if suspensions of 30 days or a year are valid, would not suspensions of five years or ten years be lawful, too?

With the several states imposing suspension of operating rights upon interstate motor carriers for violations of their motor-vehicle and traffic laws and those suspensions being of virtually unlimited duration, the federal scheme for the regulation of interstate truckers manifested in the Interstate Commerce Act would be rendered nugatory. Carriers having received certificates from the Interstate Commerce Commission upon a showing of a need for the service and their ability and willingness to render the service in accordance with the Act would be prevented from performing their obligations. The transportation to have been performed by them would have to be undertaken by others—either competing carriers which would have to expand their facilities to accommodate the additional traffic or holders of temporary operating authority granted for that purpose by the Commission. The financial position of the carriers suffering suspensions would be impaired, and the consequent measures taken to secure additional revenue would disrupt the established rate patterns approved by the Commission. Except for the most compelling reasons, these results that would surely follow a determination that a state may suspend interstate operating rights for violations of state law should not be allowed.

SUMMARY OF ARGUMENT

Absent the exercise of federal authority, a state may enact under its reserved powers reasonable measures having indirect and incidental effect on interstate commerce. To promote the welfare of its citizenry a state has the power to control and regulate the public highways and their use. For the breach of its regulations the state may impose sanctions, provided, however, that the sanctions themselves do

not exceed the state's authority. The privilege of a carrier in interstate commerce to do business within a state is beyond the power of the state to revoke or suspend as a sanction for the breach of its regulations. The statute of the State of Illinois providing for the suspension of the use of the State's highways as a sanction for the violation of the weight law is unconstitutional as applied to an interstate motor carrier certificated under the Motor Carrier Act. The Illinois law unreasonably impedes the Interstate Commerce Commission's administration of the Interstate Commerce Act.

ARGUMENT

Absent the exercise of federal authority, a state may enact under its reserved powers reasonable measures having indirect and incidental effect on interstate commerce.

It has been well established since this Court's decision in *Cooley* v. *Board of Wardens of the Port of Philadelphia, et al.*, 12 How. 299, 13 L. Ed. 996, that unless the subject matter is of such a nature as to require the exclusive legislation of Congress and until the Congress should find it necessary to exert its power, a state may legislate with respect to local matters indirectly and incidentally affecting interstate commerce. *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Serv. Comm.*, 341 U.S. 329, 71 S. Ct. 777; *Toomer* v. *Witsell*, 334 U. S. 385, 68 S. Ct. 1156; *Parker* v. *Brown*, 317 U. S. 341, 63 S. Ct. 307; *California* v. *Thompson*, 313 U. S. 109, 61 S. Ct. 930. A state is thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. *Breard* v. *City of Alexandria, La.*, 341 U. S. 622, 71 S. Ct. 920; *Kelly* v. *Washington*, 302 U. S. 1, 58 S. Ct. 87. The only requirements consistently recognized have been that the regulation

not discriminate against or place a burden on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions. *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 340 U. S. 179, 71 S. Ct. 215.

To promote the welfare of its citizenry a state has the power to control and regulate the public highways and their use.

A state has broad powers of regulation respecting the use of its highways. It may require the operator of a motor vehicle engaged in interstate commerce to secure a driver's license. *Buck* v. *People of State of California*, 343 U. S. 99, 72 S. Ct. 502; *U. S. Fidelity & Guaranty Co.* v. *Guenther*, 281 U. S. 34, 50 S. Ct. 165. It may require an interstate motor carrier to register the operation of its vehicles. *Lloyd A. Fry Roofing Co.* v. *Wood*, 344 U. S. 157, 73 S. Ct. 204; *Clark* v. *Poor*, 274 U. S. 554, 47 S. Ct. 702. To assist it to defray the costs of constructing and maintaining its highways a state may exact payment of permit, registration and license fees and gasoline and similar taxes. *Aero Mayflower Transit Co.* v. *Board of Railroad Com'rs.*, 332 U. S. 495, 68 S. Ct. 167; *Aero Transit Co.* v. *Georgia Commission*, 295 U. S. 285, 55 S. Ct. 709; *Hendrick* v. *Maryland*, 235 U. S. 610, 35 S. Ct. 140.

The state in the exercise of its police power may regulate the design and structure of the motor vehicle, *Maurer* v. *Hamilton*, 309 U. S. 598, 60 S. Ct. 726, and it may say what manner of advertising may be placarded on the sides of the vehicles. *Railway Express Agency* v. *People of State of New York*, 336 U. S. 106, 69 S. Ct. 463. In the absence of federal regulations it seems clear that a state may prescribe size and weight limits for motor vehicles traveling upon its highways in interstate commerce. *South Carolina*

State Highway Dept. v. *Barnwell Bros.*, 303 U. S. 177, 58 S. Ct. 510; *Sproles* v. *Binford*, 286 U. S. 374, 52 S. Ct. 581; *Morris* v. *Duby*, 274 U. S. 135, 47 S. Ct. 548. Accordingly, no challenge is presented herein to the validity of Section 131 of the Uniform Act prescribing the maximum allowable weights for trucks using the Illinois highways. It is simply the additional penalty sought to be imposed for the violation of Section 131 that is challenged as being unlawful and unconstitutional.

For the breach of its regulations the state may impose sanctions, provided, however, that the sanctions themselves do not exceed the state's authority.

A state has the power to impose varied sanctions for the breach of its duly-promulgated regulations. Among these is the power to arrest and presumably fine and/or imprison an operator violating the law. *Lloyd A. Fry Roofing Co.* v. *Wood*, *supra*. The vehicle itself that fails to comply with the state's regulations may be barred from the state's highways, *South Carolina State Highway Dept.* v. *Barnwell Bros.*, *supra*., or, having succeded in obtaining entry, the vehicle conceivably may be impounded by the authorities. *Dixie Ohio Express Co.* v. *State Revenue Commission*, 306 U. S. 72, 59 S. Ct. 435.

The privilege of a carrier in interstate commerce to do business within a state is beyond the power of the state to revoke or suspend as a sanction for the breach of its regulations.

It is virtually axiomatic that any attempt by a state to prescribe who may or may not engage in interstate commerce within its bounds must succumb to the commerce clause. As this Court said in *Buck* v. *Kuykendall*, 267 U. S. 307, 315, 45 S. Ct. 324, 326, in speaking of the act of the State of Washington requiring interstate as well as intra-

state common carriers to obtain certificates of public convenience and necessity:

> Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used. It prohibits such use to some persons while permitting it to others for the same purpose and in the same manner. Moreover, it determines whether the prohibition shall be applied by resort, through state officials, to a test which is peculiarly within the province of the federal action—the existence of adequate facilities for conducting interstate commerce . . . Thus, the provision of the Washington statute is a regulation, not of the use of its own highways, but of interstate commerce. Its effect upon such commerce is not merely to burden, but to obstruct it. Such state action is forbidden by the Commerce Clause.

Since the enactment of the Motor Carrier Act of 1935 any attempt by a state to determine what motor carriers may engage in interstate commerce within the state would conflict with the Congressional action and would have to give way under the supremacy clause of the Constitution. Congress gave the Commission authority to regulate interstate common carriers by motor vehicle. 49 Stat. 546, as amended, 49 U. S. C. § 304(a)(1). Congress made it mandatory for them to obtain a certificate to do business. Id., § 306. It gave the Commission broad powers of investigation over these carriers, id., § 304(c), provided for injunction against violations, id., § 322(b), and imposed criminal sanctions. Id., § 322(a). There is virtually no phase of operation that Congress has left untouched. Congress in other words has preempted the field, precluding both inconsistent and overlapping state regulations.

As it is beyond the power of the state to determine which carrier shall engage in interstate commerce within its

boundaries, such attempt at regulation being in conflict with the commerce and supremacy clauses of the Constitution, so also is a state precluded from suspending or revoking the right of a carrier to engage in interstate commerce within the state pursuant to an expressed or implied federal grant of authority. The impotence of the state persists even though the suspension or revocation are to be applied as sanctions for the violation of state laws or regulations lawfully enacted. Thus this Court has consistently held that a state cannot suspend or revoke the right of a carrier deriving its authority from the United States to operate within the state as a remedy to enforce the collection of its taxes. *Interstate Busses Corporation* v. *Blodgett*, 276 U. S. 245, 48 S. Ct. 230; *Pullman Co.* v. *Richardson*, 261 U. S. 330, 43 S. Ct. 366; *St. Louis S. W. R. Co.* v. *Arkansas ex rel. Norwood*, 235 U.S. 350, 35 S. Ct. 99; *Postal Telegraph Cable Co. v. Adams*, 155 U. S. 688, 15 S. Ct. 268; *Western Union Tel. Co.* v. *Commonwealth of Massachusetts*, 125 U. S. 530, 8 S. Ct. 961. As this Court said in *St. Louis S.W.R. Co.* v. *Arkansas ex rel. Norwood, supra* at 368, 105:

> If this must needs to be construed to mean that for non-payment of the franchise tax a foreign railroad corporation engaged in business as a common carrier of intra-state and inter-state commerce is to forfeit its right to do business in the State, not only with respect to intra-state but also with respect to interstate commerce, the effect would be to impose a condition upon its right to transact interstate commerce, and the act would be invalid as amounting in effect to a regulation of that commerce . . .

Similarly it has been held that the operations of an interstate carrier could not be disrupted in the attempt to compel compliance with a municipal regulation allowing the designation of the route through the city of the carrier's lines. *Western Union Tel. Co.* v. *Mayor of the City of New York*, 38 F. 552.

In *Hill* v. *State of Florida*, 325 U. S. 538, 65 S. Ct. 1373, a state statute had been so construed and applied that a union was prohibited from functioning as collective bargaining agent, or in any other capacity, except upon conditions fixed by the state which were not included in the National Labor Relations Act. Among these was a requirement that certain information be filed and that an annual fee of $1.00 be paid. The provision that information be supplied and an annual fee be paid was held not to conflict with the Federal Act but, for failure to comply, the union had been enjoined by a state court from functioning. This Court said at 543, 1375, "It is the sanction here imposed, and not the duty to report, which brings about a situation inconsistent with the federally protected process of collective bargaining."

In each of the foregoing cases the basic laws that were sought to be enforced were valid; the sanctions that were to be applied for their breach, however, were violative of the Constitution. "The sanction there imposed by state statute was repugnant to a right created by a federal statute, and for that reason could not stand. It was not held, nor even intimated, that the sanction would have been in itself unconstitutional had it not impinged upon a federal law." *National Maritime Union of America* v. *Herzog*, 78 F. Supp. 146, 157.

To put the question posed by this proceeding in another light, suppose that the suspension provisions of the statute were directed against interstate railroads, for example, as a penalty for violation of laws governing speed or prohibiting the blocking of rail-highway crossings beyond the time provided by state or local law. Anticipating the argument that the railroads own their rights of way, suppose further that the penalty imposed were limited to prohibiting the violating railroad from using city streets or crossing state-owned highways for given periods of time. This Court

has recently said that "railroad tracks are in the streets not as a matter of right but by permission from the State or its sub-divisions." *Atchison, T. & S. F. Ry. Co.* v. *P. U. C.*, 346 U. S. 346, 353 (prelim.), 74 S. Ct. 92, 96. Nevertheless, it seems certain that a state law which declared that a railroad's use of all city streets in the state or its privilege of crossing state highways with its trains might be suspended for 90 days or a year upon proof of violation of admittedly valid state or local laws would be universally condemned as an unreasonable intereference with interstate commerce. Although much is said in the briefs of petitioners and the American Automobile Association, Inc., *amicus curiae*, regarding state power to deal with interstate commerce in the absence of federal regulation, neither brief cites *Southern Pac. Co.* v. *State of Arizona*, 325 U. S. 761, 65 S. Ct. 1515, wherein an Arizona train-length limit law was held unconstitutional even in the absence of federal regulation. There this Court said at 783, 1527:

> Here examination of all the relevant factors makes it plain that the state interest is outweighed by the interest of the nation in an adequate, economical and efficient railway transportation service, which must prevail.

So, here, in this proceeding it is submitted that the interest of the State of Illinois in enforcing its weight-limit laws must yield to the interest of the nation in the adequate, economical and efficient transportation service required by the National Transportation Policy enacted by the Congress, 54 Stat. 899, 49 U. S. C., preceding § 1. This does not mean that Illinois is without adequate power to deal with violations of its weight-limit laws. To suggest, as do petitioners (Pet. Br. 15), that "the imposition of fines is no deterrent to overloading of motor vehicles" but merely results in "one more cost of doing business passed on to the shipper" is to reveal an appalling ignorance of the facts of present-day competitive transportation life. The plain truth is that

transportation, except for periods marked by extreme shortages of equipment such as during World War II, is in a buyer's market, and the most intense competition exists within the trucking industry and between trucks and the rails, for all manner of traffic susceptible of handling by both modes of transport. The motor carrier which sought to pass on increased costs incurred by reason of overloading fines through a rate increase of even one cent per hundred pounds in excess of his competitors' charges would simply put himself out of business.

The statute of the State of Illinois providing for the suspension of the use of the State's highways as a sanction for the violation of the weight law is unconstitutional as applied to an interstate motor carrier certificated under the Motor Carrier Act.

The suspension by a State of the authority of an interstate motor carrier to operate pursuant to its certificate of public convenience and necessity issued under the Motor Carrier Act would conflict with the commerce and supremacy clauses of the Constitution and would deprive the respondent of property without due process of law.

In *Simpson* v. *Shepard* (The Minnesota Rate Cases), 230 U. S. 352, 399, 33 S. Ct. 729, 740, this Court said:

> The grant in the Constitution of its own force, that is without action by Congress, established the essential immunity of interstate commercial intercourse from the direct control of the States with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. It has repeatedly been declared by this Court that as to those subjects which require a general system or uniformity of regulation, the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to special requirements of local condi-

tions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation.

The principle, which determines this classification, underlies the doctrine that the States cannot under any guise impose direct burdens upon interstate commerce. For this is but to hold that the States are not permitted directly to regulate or restrain that which from its nature should be under the control of one authority and be free from restriction save as it is governed in the manner that the national legislature constitutionally ordains.

Thus, the States cannot tax interstate commerce, either by laying the tax upon the business which constitutes such commerce or the privilege of engaging in it, or upon the receipts, as such, derived from it; or upon persons or property in transit in interstate commerce.

They have no power to prohibit interstate trade in legitimate articles of commerce; or to discriminate against the products of other States; or to exclude from the limits of the State corporations or others engaged in interstate commerce or to fetter by conditions their rights to carry it on; or to prescribe the rates to be charged for transportation from one State to another, or subject the operations of carriers in the course of such transportation to requirements that are unreasonable or pass beyond the bounds of suitable local protection. [Citations omitted.]

Prior to the enactment of the Motor Carrier Act a state could not require an interstate carrier to secure a certificate of public convenience and necessity as a condition precedent to operating within the state. *Buck* v. *Kuykendall, supra.* Conversely, it is doubtful whether a state could have excluded an interstate carrier from the use of its roads as a sanction for the violation of its laws, for such exclusion would have cast a burden upon interstate commerce. With the enactment of the Motor Carrier Act, and the regulations

thereunder, there ceased to be any doubt that a state could not suspend the operations of an interstate motor carrier. *Eichholz* v. *Public Service Commission*, 306 U. S. 622, 59 S. Ct. 532; *H. P. Welch Co.* v. *State of New Hampshire*, 306 U. S. 79, 59 S. Ct. 438.

Sections 206 and 207 of the Interstate Commerce Act (49 Stat. 551, as amended, 49 U.S.C. §§ 306, 307) prescribe the conditions and procedures for a common carrier by motor vehicle to secure a certificate of public convenience and necessity from the Interstate Commerce Commission. In accordance with their provisions respondent was authorized to engage in interstate commerce as a common carrier by motor vehicle in the State of Illinois, among other states.

Section 212 of the Act (49 Stat. 555, as amended, 49 U.S.C. 312) provides for the suspension, change, revocation and transfer of certificates of public convenience and necessity. It states specifically that, "Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided." The procedure prescribed for suspension is not germane to the issue herein except insofar as the petitioners have made and are making no pretense to comply with the prescribed procedure in their quest to suspend respondent's use of the Illinois highways.

The procedure of Section 212 for the suspension or revocation of operating authority is exclusive. A certificate of public convenience and necessity issued by the Interstate Commerce Commission remains in full force and effect except as modified, suspended or revoked by the Commission in accordance with the provisions of Section 212. *Boulevard Transit Lines* v. *U. S.*, 77 F. Supp. 594. Speaking of the life span of such a certificate once it has been issued, the District Court for the District of Massachusetts in *General Transp. Co.* v. *U. S.*, 65 F. Supp. 981, 985, said:

> That matter is covered by § 212(a) of Part II of the Act, 49 U.S.C.A. § 312(a) which provides that certificates

> from their effective date "shall remain in effect until suspended or terminated as herein provided," and that termination, except upon application of the holder, must be by the Commission, either upon complaint or on its own initiative, after notice and hearing. This explicit provision seems . . . fully to warrant the Commission's interpretation of the Act in Quaker City Bus Co.—Purchase—Blackhawk Line, Inc., 28 M.C.C. 663, in which it said (p. 666): "The mere fact of interruption in operations does not automatically revoke a certificate. To accomplish a revocation of a certificate the provisions of Section 212(a) must be satisfied." "Until that certificate is revoked in accordance with the procedure prescribed in § 212(a), it remains in full force and effect."

If the Illinois statute involved in this proceeding is valid as applied to interstate motor carriers franchised by the Interstate Commerce Commission, it is obvious that other states may devise different statutory schemes for the suspension of such carriers' use of their highways. As a practical matter, then, the reasons for such suspensions, the method by which they would be invoked, and their duration would be limited only by the imagination of the various state legislatures in enacting such suspension statutes. Once the validity of such suspension laws is admitted, it is obvious that state laws providing therefor would run the gamut from relatively minor infractions to more serious ones. Thus the anomalous situation would be brought about in which carriers which met identically the same burden in securing their I.C.C. franchises, i.e., proof of public convenience and necessity in the case of common carriers and consistency with the public interest and the National Transportation Policy in the case of contract carriers, would find that their right to operate could be suspended for a multitude of reasons based on provisions of differing state laws, and even on differing state court interpretations of laws written in identical language, with one operator forced to suspend his use of State A's highways for a relatively trivial offense, while another,

competing carrier could continue to use the highways of State B even though guilty of more serious infractions of its laws.

The extent to which such varying laws and court interpretations would result in acute discrimination between motor carriers operating in interstate commerce under franchises issued by the Interstate Commerce Commission can be readily illustrated. For example, a typical case might involve competing motor carriers operating between Memphis, Tennessee, and Des Moines, Iowa, one of them via Illinois highways, the other those of Missouri. Assuming the validity of the Illinois statute here in issue, the opportunity for discrimination against the carrier using its highways is patent.

The requirement that a certificate of public convenience and necessity issued by the Interstate Commerce Commission be suspended, changed or revoked only in accordance with the provisions of Section 212 is necessary to assure that the certificated carrier not be deprived of property without due process of law. It has been established that "the holder of the certificate must be recognized as the holder of property and that such property may not be taken from it without due process and with an arbitrary or unreasonable motive." *Texas & Pacific Motor Transport Co.* v. *U. S.*, 87 F. Supp. 107, 110, reversed on other grounds 340 U. S. 450, 71 S. Ct. 422. In the words of this Court in *Railroad Commission* v. *Pacific Gas and Electric Co.*, 302 U. S. 388, 393, 58 S. Ct. 334, 338:

> The right to a fair and open hearing is one of the rudiments of fair play assured to every litigant by the Federal Constitution as a minimal requirement. *Ohio Bell Telephone Co.* v. *Public Utilities Comm'n.*, 301 U. S. 292, 304, 305. There must be due notice and an opportunity to be heard, the procedure must be consistent with the essentials of a fair trial, and the Commission must act upon evidence and not arbitrarily.

The right of the respondent to a hearing before the Interstate Commerce Commission preceding the suspension of its operating rights would be denied under Section 132.02 of the Illinois Uniform Act. To that extent the respondent would be deprived of property without due process of law.

Furthermore the suspension procedure of Section 132.02 of the Illinois Uniform Act is in addition to and in conflict with the suspension procedure of Section 212 of the Interstate Commerce Act. Under Article II of the Constitution declaring federal enactments to be the supreme law of the land, the state regulation seeking to occupy the same field as the federal must yield to the latter.

However, even in the absence of the Motor Carrier Act, the Illinois statute purporting to deny use of the Illinois highways to a motor carrier engaged in interstate commerce as a sanction for the violation of its size and weight law would be unconstitutional as a burden upon interstate commerce in violation of Article I, Section 8.

The Illinois law unreasonably impedes the Interstate Commerce Commission's administration of the Interstate Commerce Act

Neither the brief of petitioners nor that of the American Automobile Association, Inc., *amicus curiae*, treats the matter of regulation by the Interstate Commerce Commission of carriers such as respondent, and the effect upon the Commission's administration of the Interstate Commerce Act of upholding the constitutionality of the Illinois statute here involved. But it is the Commission, and not the states, which is charged with the duty, under the National Transportation Policy, of assuring "fair and impartial regulation of all modes of transportation" subject to the Act and the promotion of "safe, adequate, economical and efficient service * * * among the several carriers." In order to carry out the mandate of the National Transpor-

tation Policy, the Commission is required, among other duties, to determine whether the public convenience and necessity requires additional motor carrier service between the points and places or within the areas designated by such carriers in their applications filed with the Commission from time to time pursuant to the provisions of the applicable section of the law. 49 Stat. 551, as amended, 49 U.S.C.A. 306. How, then, is the Commission to properly administer the Interstate Commerce Act, if each state has the power, in effect, to suspend the franchise issued by the Commission for varying periods of time? Suppose, for example, that Illinois should ultimately suspend, for one year, an interstate motor carrier's use of its highways. Suppose, too, that the suspended carrier held extensive authority from the Commission to perform service to and from many Illinois points, requiring the use of a substantial number of vehicles. There can be no argument but that there is a public need for the service covered by the suspended franchise; otherwise the Commission would not have authorized it in the first instance.

When Illinois, therefore, suspends the carrier's use of its highways, there is a service void, with respect to which the State of Illinois is apparently unconcerned, but with which the Commission must be concerned in its administration of the Interstate Commerce Act.

The Commission would seem to have but two choices of action open to it in the situation outlined: First, the issuance of permanent operating authority to another carrier, duplicating the authority held by the suspended carrier; second, the issuance of temporary authority, for a period not to exceed one hundred and eighty days, to another carrier. 52 Stat. 1238, as amended, 49 U.S.C. § 310a. In the first case, the Commission's action might be self-defeating in that, after the one year's suspension had expired, there would be two motor carriers authorized permanently to perform service to and from the same Illinois points,

whereas the public had need for only one such carrier, thus contravening the mandate of the Transportation Policy to "foster sound economic conditions in transportation and among the several carriers." The second alternative, particularly in those cases in which the suspended carrier served a large number of Illinois points, would present an even more difficult obstacle. Where the effort to fill the service void resulting from suspension of the right to use Illinois highways would require the purchase or lease of a large number of vehicles by a motor carrier attempting to continue the suspended carrier's service, no such carrier could reasonably be expected to incur the expense incident to such increased operations, knowing that its additional operating authority was only temporary and in any event was conditioned to expire one hundred and eighty days after its institution. It is respectfully suggested that an interpretation which upholds the validity of the Illinois statute here involved would ultimately impose an onerous, perhaps intolerable, burden upon the Commission in its efforts to administer the Interstate Commerce Act in accordance with the mandate of the National Transportation Policy.

CONCLUSION

In view of the foregoing, American Trucking Associations, Inc., *amicus curiae*, prays that this Court will affirm the decision of the Supreme Court of Illinois.

Respectfully submitted,

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APPENDIX A

Sections 132 and 132.01 of the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat., 1953, Ch. 95½, pars. 229, 229a, Vol. 2, pp. 256-257).

§ 132. Officers to Weigh Vehicles and Require Removal of Excess Load.—(a) Any police officer having reason to believe that the weight of a vehicle and load is unlawful shall require the driver to stop and submit to a weighing of the same either by means of a portable or stationary scales. If such scales are not available at the place where such vehicle is stopped, the police officer shall require that such vehicle be driven to the nearest public scales.

(b) Whenever an officer upon weighing a vehicle and load, as above provided, determines that the weight is unlawful, such officer shall require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under this Act and shall forthwith arrest the driver. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

(c) Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing or who fails or refuses when directed by an officer upon weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section, shall be guilty of a misdemeanor. (As amended by Act approved August 10, 1949.)

§ 132.01. Whenever any vehicle is operated in violation of the provisions of Section 131 of this Act, the owner or driver, or both, of such vehicle shall be deemed guilty of such violation and either or both the owner and the driver of such vehicle may be prosecuted for such violation. Except as provided in the second paragraph of this Section, any person, firm or corporation convicted of such violation

shall be fined in an amount equal to two cents per pound for each pound of excess weight when the excess is 2000 pounds or less; four cents per pound for each pound of excess weight when the excess exceeds 2000 pounds and is 3000 pounds or less; six cents per pound for each pound of excess weight when the excess exceeds 3000 pounds and is 4000 pounds or less; eight cents per pound for each pound of excess weight when the excess exceeds 4000 pounds and is 5000 pounds or less and ten cents per pound for each pound of excess weight when the excess exceeds 5000 pounds.

If the violation complained of is based upon an overload of not more than 350 pounds on a single axle, and the defendant proves that such violations resulted from an unavoidable shifting of the load carried in the vehicle, the amount of the fine shall not exceed $1.00. (As amended by act approved August 6, 1951.).